

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DURAN IRVIN,)
Plaintiff,)
)
v.) C.A. No. 04-10295-WGY
)
ANDREA CABRAL, et al.)
Defendants.)

MEMORANDUM AND ORDER

For the reasons stated below, plaintiff's Application to Proceed Without Prepayment of Fees is denied without prejudice to refiling with a copy of his certified prison account statement within forty-two (42) days of the date of this Memorandum and Order. The Clerk will be directed to send a copy of this Memorandum and Order to the authorities at the Suffolk County Jail and House of Correction.

BACKGROUND

On January 20, 2004, plaintiff Duran Irvin, now incarcerated at the Suffolk County House of Correction, submitted for filing a pro se class-action complaint pursuant to 42 U.S.C. § 1983 naming as defendants Sheriff Andrea Cabral and Deputy Superintendent Mary Mastrorilli. See Complaint, Docket No. 1. With his complaint, plaintiff filed an affidavit in support of class action and two declarations in support of request to proceed in forma pauperis. See Docket Nos. 2-4. Plaintiff seeks to challenge the conditions in the

protective custody unit at the Suffolk County House of Correction.

By Order dated February 26, 2004, plaintiff was granted forty-two days to either pay the filing fee or file an Application to Proceed Without Prepayment of Fees and Affidavit. See Docket No. 5. On March 5, 2004, plaintiff filed an Application to Proceed Without Prepayment of Fees and Affidavit. See Docket No. 7. Plaintiff did not attach a certified prison account statement to his application.

By Order dated March 9, 2004, the class allegations were stricken as Mr. Irvin cannot represent others. See Docket No. 8. The Court denied plaintiff's IFP application without prejudice to refiling with a copy of his certified prison account statement within forty-two days. Id.

On March 29, 2004, plaintiff filed an Application to Proceed Without Prepayment of Fees accompanied by a commissary slip. See Docket No. 10. Although the Application indicates that plaintiff has no source of income and no funds, the commissary slip lists a commissary balance of \$31.48. With his Application, plaintiff filed a letter that explaining he was forced to send a copy of his commissary slip "[d]ue to institution policy, inmates are not allowed to receive a ledger sheet from the facility's treasurers office, unless

their (sic) is an order from the Judge ordering such release."

See Docket No. 9.

DISCUSSION

Although plaintiff has submitted an Application to Proceed Without Prepayment of Fees as required under Section 1915(a)(1), he has not yet provided the required certified copy of his trust fund account statement at the Suffolk County Jail and House of Correction as required by Section 1915(a)(2). See 28 U.S.C. § 1915 (a)(1), (a)(2).¹

To enable this Court to calculate the amount that plaintiff must initially pay pursuant to Section 1915(b)(1), a copy of this Memorandum and Order will be sent by the Clerk to the Treasurer's Office at the Suffolk County Jail and House of Correction so that a copy of plaintiff's account statement may be promptly prepared and forwarded to:

Honorable William G. Young, Chief Judge
United States District Court
District of Massachusetts
John Joseph Moakley Courthouse
1 Courthouse Way, Suite 2300
Boston, MA 02210

¹If plaintiff submits a certified copy of his prison account statement, the Court will direct the appropriate prison official to withhold from plaintiff's prison account and pay to the Court an initial payment towards the \$150.00 filing fee. The appropriate prison official will also be directed to collect monthly payments from plaintiff's prison account on a continuing basis until such time as the \$150.00 statutory filing fee is paid in full. Id.

The Clerk will also send a copy of this Memorandum and Order to plaintiff along with a copy of the prescribed Application To Proceed Without Prepayment of Fees and Affidavit.

ORDER

ACCORDINGLY, plaintiff's Application to Proceed Without Prepayment of Fees (Docket No. 10) is denied without prejudice to prejudice to refiling with a copy of his certified prison account statement within forty-two (42) days of the date of this Memorandum and Order. The Clerk is directed to send a copy of this Memorandum and Order to the Treasurer's Office at the Suffolk County Jail and House of Correction so that a copy of plaintiff's account statement may be promptly prepared and forwarded to:

Honorable William G. Young, Chief Judge
United States District Court
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John Joseph Moakley Courthouse
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Boston, MA 02210

SO ORDERED.

Dated at Boston, Massachusetts, this 9th day of April, 2004.

s/ William G. Young
WILLIAM G. YOUNG
CHIEF JUDGE
UNITED STATES DISTRICT COURT